



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200938039

JUN 24 2009

U.I.L. 408.03-00

XXXXX
XXXXX
XXXXX
XXXXX

SE: T: EP: RA: TY

Legend:

Taxpayer A = xxxxx

IRA X = xxxxx

Savings Account Y = xxxxx

Bank 1 = xxxxx

Savings Account Z = xxxxx

Bank 2 = xxxxx

Amount N = \$ xxxxx

Amount O = \$ xxxxx

Amount P = \$ xxxxx

Year 1 = xxxxx

Date 1 = xxxxx

Date 2 = xxxxx

Date 3 = July 30

Dear xxxxx:

This is in response to your letter dated December 2, 2008, as supplemented by correspondence dated January 27 and March 31, 2009, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations are made under penalties of perjury in support of your ruling request.

Taxpayer A, age 79, represents that she received a distribution from a traditional individual retirement arrangement, IRA X, of which she intended to roll over Amount P to another IRA. Taxpayer A asserts that her failure to accomplish a rollover of Amount P within the 60-day period prescribed by section 408(d)(3) of the Code was due to her mental condition which impaired her ability to manage her financial affairs during the 60-day period. Taxpayer A further represents that Amount P has not been used for any other purpose.

Taxpayer A maintained IRA X with Bank 1. In Year 1, Taxpayer A engaged in a series of transactions with the intent to roll over a portion of IRA X into another IRA. Taxpayer A had successfully completed other IRA rollovers in prior years.

On Date 1, Taxpayer A withdrew Amount N from IRA X and deposited Amount N in Savings Account Y at Bank 1. Amount N was the value of a 12-month Certificate of Deposit (CD) which had matured and which constituted the total account balance of IRA X. Taxpayer A represents that she intended to roll over Amount P to an IRA at Bank 2. On Date 2, Taxpayer A withdrew Amount O from Savings Account Y. Amount O is an amount greater than Amount N and constituted the total account balance of Savings Account Y. On Date 3, fewer than 60 days after Date 1, Taxpayer A went to Bank 2 to complete the rollover transaction but instead opened Savings Account Z into which she deposited Amount P. Amount P is an amount less than Amount N. Amount P has remained in Savings Account Z. The failed transaction was discovered by a tax preparer while completing Taxpayer A's tax return(s) for Year 1. At that time, it was also discovered that Taxpayer A had mismanaged other financial matters in Year 1.

Taxpayer A asserts that, during Year 1, including the 60-day period following Date 1, Taxpayer A, under the care and observation of her physician, was treated with prescription medication to address her increasing difficulty with short-term memory loss. In a letter, her physician concluded that, on account of

Taxpayer A's mental condition, her ability to handle and understand financial matters was impaired throughout the period of time for completing the rollover of Amount P.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount P from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(d)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a rollover of Amount P was due to her mental condition which impaired her ability to manage her financial affairs.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution on Date 1 from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount P, representing that portion of Amount N which was deposited into Savings Account Z, into an IRA. Provided all other requirements of section 408(d)(3) of the Code except the 60-day requirement are met with respect to such contribution amount will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed to Taxpayer A by section 401(a)(9) of the Code.

This ruling assumes that IRA X satisfied the qualification requirements of section 408 of the Code at all times relevant to this transaction.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

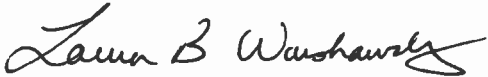
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This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact _____, I.D. # _____, by telephone at 202-283-9651. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,


for Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures: